

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Comcast Cable Communications, LLC, on behalf	)	CSR 7762-E & CSR 7763-E
of its subsidiaries and affiliates	)	
	)	
Petition for Determination of Effective	)	
Competition in Alabama Communities	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 5, 2008**

**Released: June 6, 2008**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”).<sup>3</sup> Petitioner alternatively claims to be exempt from cable rate regulation in the Communities listed on Attachment B because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>4</sup> as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>5</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>6</sup> For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachments (A and B).

<sup>1</sup>See 47 U.S.C. § 543(a)(1).

<sup>2</sup>47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

<sup>3</sup>Dish is a registered trademark of EchoStar Communications Corporation.

<sup>4</sup>47 C.F.R. § 76.906.

<sup>5</sup>See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

<sup>6</sup>See 47 C.F.R. §§ 76.906 & 907.

## II. DISCUSSION

### A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;<sup>7</sup> this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.<sup>8</sup>

5. Turning to the first prong of this test, it is undisputed that these Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.<sup>9</sup> The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.<sup>10</sup> We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Communities to support their assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.<sup>11</sup> The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming<sup>12</sup> and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.<sup>13</sup> Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.<sup>14</sup> Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Communities.<sup>15</sup> Petitioner sought to determine

<sup>7</sup>47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>8</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>9</sup>*See* Petition CSR 7762-E at 3-4; Petition CSR 7763-E at 3-4.

<sup>10</sup>*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

<sup>11</sup>47 C.F.R. § 76.905(e)(2).

<sup>12</sup>*See* 47 C.F.R. § 76.905(g). *See also* Petition CSR 7762-E at 4-5; Petition CSR 7763-E at 4-5.

<sup>13</sup>*See* Petition CSR 7762-E at 4-5 and Exhibits 2 and 3; Petition CSR 7763-E at 4-5 and Exhibits 2 and 3.

<sup>14</sup>*See* Petition CSR 7762-E at 3; Petition CSR 7763-E at 3.

<sup>15</sup>Petition CSR 7762-E at 6; Petition CSR 7763-E at 6. Comcast is the largest MVPD in the Communities of Abbeville, Cottonwood, Dothan, Headland, Newville, and Webb. However, Comcast is unable to determine which MVPD is the largest in the Communities of Clayton and Houston County because the DBS subscribership data

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the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code plus four basis.<sup>16</sup>

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>17</sup> as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

#### **B. The Low Penetration Test**

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.<sup>18</sup> Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Communities listed on Attachment B. Therefore, the low penetration test is also satisfied as to the Communities.

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obtained from SBCA is aggregated and does not break down the individual subscribership of each DBS provider. Nevertheless, Comcast argues that it is subject to effective competition because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Comcast subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

<sup>16</sup>Petition CSR 7762-E at 5-8; Petition CSR 7763-E at 5-8.

<sup>17</sup>Petition CSR 7762-E at 8 and Exhibit 7; Petition CSR 7763-E at 8 and Exhibit 7.

<sup>18</sup>47 U.S.C. § 543(l)(1)(A).

### III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckert  
Senior Deputy Chief, Policy Division, Media Bureau

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<sup>19</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC, ON BEHALF  
OF ITS SUBSIDIARIES AND AFFILIATES

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Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
Abbeville City	AL0359 AL0664	46.93%	1172	550
Cottonwood Town	AL0519	44.54%	485	216
Dothan City	AL0113	41.68%	23685	9872**
Headland City	AL0363	52.28%	1423	744
Houston County	AL0362	36.08%	7516	2712
Newville Town	AL0526	52.94%	221	117
Webb Town	AL0561	27.29%	491	134

\*CPR = Percent of competitive DBS penetration rate.

\*\* = combined DBS (2,584) and over-builder subscribers (Graceba Total Communications – 7,288 video subscribers).

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Communities	CUID	CPR*	2000 Census Household	Estimated DBS Subscribers
Clayton Town	AL0515	43.34%	593	257

**ATTACHMENT B****CSR 7762-E****COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC, ON BEHALF  
OF ITS SUBSIDIARIES AND AFFILIATES**

<b>Communities</b>	<b>CUIDS</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Percentage</b>
Ashford City	AL0360	763	91	11.93%
Avon City	AL0562	185	23	12.43%
Cowarts Town	AL0361	603	73	12.11%
Houston County	AL0362	7516	1262	16.79%
Webb Town	AL0561	491	135	27.49%